

BOLSHEVIK THEORY OF JURISPRUDENCE

I remember once hearing a Bolshevik discuss the difficulties of a Soviet representative at an imaginary pan-European *rapprochement*. I asked him whether he referred specifically to confusion and embarrassment in ethical issues, and he answered me with a frank outline of the hybrid, and indeed unreal, nature of an entente between traditional Western democracy and the Soviet. He talked, too, I recollect, of the obvious unfruitfulness of external arbitration in matters of justice and discipline in the U.S.S.R.

This was long before M. Litvinoff applied himself (for the benefit of Great Britain) to the defence of the G.P.U. procedure in respect of foreign nationals. If sabotage (an extremely comprehensive term, by the way) is a sin crying to the State for vengeance, and if a man be adjudged guilty by a constitutional tribunal functioning normally, who can complain because the tribunal is the G.P.U., or because (the discharge of its austere commission being a trifle arbitrary) its patients, once convicted, are dispatched swiftly and without show?

The purely practical mind, recalling the trial of Ramsin and his fellow engineers and intellectuals three years ago, and the tendency of the government to suspect 'specialist-experts' as counter-revolutionaries and foreign 'wreckers,' will be given mainly to recognising something of the risk suffered by foreign technicians who elect to collaborate in Soviet industrial constructions; and the upholders of traditional morality will be logical enough in deprecating the recognition of a Marxist republic as a respectable political convention. We recall that the anomalies of the situation were insisted upon trenchantly enough soon after the telegram of October 1924 was sent off, in which France officially declared her recognition of the U.S.S.R.

Law, according to an eminent Bolshevik jurist, is merely the formulation of such social relations as represent the

interest of the proletariat and its party, and is supported by its organised impulse, the State. Excepting, therefore, a mean of international Equity (whose exigencies—a temporary consideration so far as the Komintern is concerned—must be admitted purely on grounds of necessity), discussions concerning justice in the U.S.S.R. resolve themselves into attack and defence of this moral sanction. For the philosophical basis of Bolshevik legislation manages by a curious *complectio oppositorum* to be in effect both determinist and indeterminist—determinist in the sense that human behaviour consists for the Soviet legislator in appropriate reaction to stimuli, which must be, partially at any rate, provided by Bolshevik polity; indeterminist, in the sense that aggregate reality is a shifting quantity, vitiating such things as absolute standards, or reducing them to the category of mere utility. I mean that the moral conscience of the individual has been abolished and replaced by the conscience of Marxist society. Of this social conscience the State is the bulwark, and this, in turn, must be defended. Chief among its implements of defence is the judicial system of the Union. There, in brief, you see justice in its true perspective in the U.S.S.R. Right and wrong, and that which differentiates them, are for the Bolshevik simply the decrees of custom. We have changed our habits, we have subverted former traditions. 'Away then,' cries the Bolshevik, 'with the increment of the past. Away with lumber and refuse and obstruction.' For Law is no more than the coercive aspect of custom; and Russian consciousness in respect of Law is pregnant with distrust. There is a Benthamite suspicion that Law *in se* is evil: and to be justified the legislator must be sure that the evil he attacks is greater than that which he employs.

'The procedure of the Law in Russia is sinister,' I suggested to a Bolshevik friend of mine. 'Law itself is sinister,' he answered.

Law is necessary, the Russian citizen is taught; but it is necessary only as an expression of revolution. 'The re-

volutionary sense of justice, the revolutionary conscience must determine the comprehension and practical application of the Law' (Lenin, in 1921). No Bolshevist jurist will deny that there is in Russia no legal prescription and no procedure to assure the accused of a fair trial. The penal code of 1922 did not and was never meant to repeal the terrorism of the Revolution. In 1921 Lenin wrote of the proposed code (no mere 'narrow jurisprudence') that characterises and justifies terrorism and determines its necessity and limits. Its object was 'to base terrorism firmly on a fundamental principle' and give it a legal form unequivocal 'and without deception and embellishments.'

Not only are propagandists and agitators and their sympathisers—those who by foreign intervention, blockade, espionage, financing, aim at the obstruction of the Socialist programme—rendered by the Penal Code liable to death by shooting, but the State may choose (as it usually does), the corrective and retributive mean of direct administrative pressure. This is an activity assigned (as a whole-time job) to the *United State Political Administration* (G.P.U., or OGPU). The purely nominal metamorphosis of the latter from the famous Cheka or *extraordinary Commission* was the only indication, so far as terrorist methods were concerned, of the secure establishment of the Bolshevists. Both tribunals are to be regarded as organs of the political terror—both possessing the power of life and death in their dealings with counter-revolutionary movements and the prosecution of individuals. And the G.P.U. survives intact the attempts of jurists like Krylenko, the public prosecutor, to annul or limit to any appreciable extent its judicial powers.

The G.P.U. is subject to none but the party, and it need not publish its activities; it is a clear expression of the Bolshevist conception of Law—for it is guided solely by political interests. 'It acts,' I heard a Bolshevist say proudly, 'directly in the interests of the people. It knows no cause but the social cause: it is the right hand of the people.'

BLACKFRIARS

The G.P.U. may use hostages and mass executions as a means of discouraging counter-revolution, and disaffection in the public services; it may shoot financiers and hoarders as the best means of averting inflation. Its activities are in this sense less whimsical than report would have us believe; they are, down to the smallest detail, inspired by the exigencies of the Marxist conscience, by the transcendent consciousness of the Bolshevik ideal in the realisation of which human suffering, the sacrifice of the individual or of the class are accounted nothing. And if Stalin's general line (the policy of the Party), a mere passing expedient, is nevertheless the criterion whereby the Soviet judges social and political contingencies—then sentimentality must not weep at the extermination of them that obstruct.

The nominal supervision of the Public Prosecutor of the Supreme Court (a measure taken to advertise the legality of the G.P.U.) is in effect a fiction. So much for the autonomous nature of the G.P.U. with its arbitrary authority, its special goals, its army of police and spies. We take it as a more typical specimen, effectively, of Soviet judicial administration.

What of the regular courts? Are they a mere show? Is the exceedingly able public prosecutor a mere advertisement manager for revolutionary justice? We cannot dispose so easily of this section of the Soviet judicial system.

Like the G.P.U., the courts exist to enforce the penal sanction of Bolshevism. Unique in the judicial world and in the history of jurisprudence they are maintained solely to induce social and political ends. Their object does not pretend to be the administration of retribution and justice. 'No more legalism!' said one of the revolutionary reformers, 'no longer "crime," for sin is the fabrication of theology (and for theology we have substituted a dialectic), no longer the sentencing of crime but condemnation according to the injury done to the community.' A crime, to be a crime, must assume political importance; and the more political its character the graver will be the indict-

BOLSHEVIK THEORY OF JURISPRUDENCE

ment. When Yusef kills Ivan, Yusef has indeed sinned against Society, but Society was limited to Ivan. And unless Ivan was more than a mere unit of mankind Yusef will not suffer the extreme penalty. But when Yusef has been guilty of wrecking, of the destruction of machinery, of commodities, he will be lucky to escape death. Punishment is purely remedial. When a man has sinned heinously against Society the educational interests of the public alone demand the impressive measure of capital punishment. Society, too, must no longer be obstructed by the incorrigible. But by all means let the lesser sinner bring forth works meet for repentance. Penalisation (it is a dictum of Bolshevik jurists) is purely a measure of social defence. Meanwhile the executive of the Soviets is omnipotent. Verdicts may rest with it; its prerogative to pardon and condemn is not restricted.

We have suggested that the regular courts are not mere show, not a sham to entitle Soviet jurisprudence to a place in the *Jus Gentium*. They may be and doubtless are in effect less influential than the G.P.U. But they operate by means of the same pre-humanist and pre-ethical conscience, inspired by the same transcendent policy. They are 'the Law' of a Marxist state. And they surpass the G.P.U. as a fixed and cardinal forum, illustrating for the world at large an economy that boasts the absolute truth, a faith that is obligatory for all, a 'religion' that is not afraid to persecute.'

J. F. T. PRINCE.